SPECIAL CIVIL APPLICATION No. 20420 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**
2	To be referred to the Reporter or not ? **-Yes.**
3	Whether their Lordships wish to see the fair copy of the judgment ? **-No.**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**
5	Whether it is to be circulated to the civil judge ? **-No.**

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RAJUBHAI PRATAPBHAI PANPATIL - Petitioner(s)

Versus

COMMISSIONER OF POLICE SURAT CITY &2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/11/2005

ORAL JUDGMENT

1.Rajubhai Pratapbhai Panpatil, petitioner has filed this petition of habeas corpus under Article 226 of the Constitution of India challenging the order of detention dated 25/5/2005 passed by the Commissioner of Police, Surat City, respondent no.1 herein and further be pleased to ask the respondent to release the petitioner detenue

from the detention forthwith.

2.It is the case of the petitioner detenue that petitioner is detained under section 2(b) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “the PASA Act” for convenience) with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and in exercise of the powers conferred under Section 3(2) of the PASA Act, the petitioner was served with the copy of the impugned order of detention dated 25/5/2005 and even the actual date of execution of order of detention upon the detenue by the detaining authority is returnable on 25/5/2005.

2.1 It is the case of the petitioner that petitioner is also supplied with the grounds of detention along with the documents running into 20 pages. Copy of the grounds of detention dated 25/5/2005 along with the documents supplied by the Respondent no.1 is annexed as Annexure-C to the petition.

2.2 Ms.Banna Dutta, learned advocate on behalf of the petitioner states that it is alleged in the grounds of detention that the petitioner is indulging in the offence of prohibition and therefore it is alleged that he is a “bootlegger” within the meaning of Section 2(b) of the PASA Act and is carrying on the alleged anti-social activities pertaining to the foreign-made illegal liquor business within the jurisdiction of D.C.B. Police Station, Surat. The authority has alleged that the offence is registered with D.C.B. Police Station, Surat vide CR No.5214/2005 for the offence punishable under Section 66(1)B, 65(A)E, 116(B) and 81 of the Bombay Prohibition Act on 10/4/2005. It is stated in the grounds of detention that above offence is pending for investigation. It is further alleged that if detenue is kept free, there are possibility of continuing with the anti-social activities and hence the detention order is passed. It is alleged in grounds of detention that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, the respondent no.1 has passed the impugned order of detention in this behalf.

2.3 The learned advocate for the petitioner has submitted that the alleged activity of the detenue and registration of one criminal case, if found true, would indicate only the law and order problem and, for that remedy under the ordinary law is sufficient and, therefore, no action under the PASA ACT was required to be taken. The learned advocate further submitted that no statement of independent witness have been recorded so as to justify the grounds of detention order and therefore, there is no cogent material placed by the sponsoring

authority before the detaining authority for arriving at the subjective satisfaction. According to the learned counsel, though there may be registration of criminal case under the Bombay Prohibition Act against the detenue, but, the subjective satisfaction of the detaining authority about the activities of the detenue being prejudicial or disturbing even the tempo of relevant and credible material is not available before the detaining authority for passing the order of detention. The learned counsel, in support of the same, relied upon 1) judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta vs. Commissioner of Police, reported in AIR 1989 SC 491, particularly para 18 at page 496. In para 18, it is observed that:

2.3 A."In the instant case, the detaining authority,in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

3.The learned counsel also relied upon the judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R. Calla and R.R. Tripathi, J.J.) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000, decided on 22/8/2000 in the case of Ashok Balabhai Makwana vs. State of Gujarat. The learned counsel has also relied upon the judgment in the case of Ashokbhai Jivrajbhai v. Commissioner of Police, decided by the Division Bench of this Court (Coram:C.K.Thakker and K.M.Mehta, J.J.), reported in 2000

(1) GLR 816. The Division Bench has considered earlier judgment in the case of Shyamji Mulji v. Commissioner of Police, reported in 1992 (2) GLR 1360 and after referring to the same, in the case of Ashokbhai Jivrajbhai, the Division Bench has observed in para 19, 20 and 21 at page 821 as under:

3A. “Para 19. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 : {1989 (1) GLR 563 (SC) and T.Devaki v. State of Tamil Nadu, Air 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenue was necessary in order to prevent activities of he detenue in maintenance of public order. Similarly, in T.Devaki panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

3B. Para 20 The Division Bench following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

3C. Para 20A Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police &Ors., 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v.State of West Bengal, 1970 (1) SCC 98 and held that stray incidents would not affect “public order” and order of detention cannot be passed in such cases.

3D. Para 21 So far as the cases against the detenue are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us herein above, the case falls under the maintenance of “Law and Order” and not “Public Order”. The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said o be legal valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed

by the detaining authority for maintenance of “Public Order”, the order deserves to be quashed and is hereby set aside. The detenue is ordered to e set at liberty forthwith unless required in any other case. Appeal is accordingly allowed.”

4. On behalf of the respondent, I have heard Mr.N.D.Gohil, learned Asst. Public Prosecutor. He has tried to support the order of detention in this behalf. In the order of detention and grounds submitted, it appears that detaining authority has relied upon registered CR No.5214 of 2005 dated 10/4/2005. Bail has been granted on 15/4/2005. No statement under Section 9(2) has been recorded. The detaining authority has arrived at the conclusion that the remedy under the ordinary law is not sufficient to prevent the detenue from indulging into anti-social and criminal activities and considering over all facts on the basis of registration of Criminal Case, the detaining authority passed the order of detention on 25/5/2005. The learned counsel further submitted that there was sufficient material before the detaining authority to pass the detention order and no interference is call for by this Court in exercise of powers under Article 226 of the Constitution of India.

5. I have considered the judgment of the Hon'ble Apex Court in the case of Piyush Kantilal and the judgment of this Court in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000, in the case of Ashok Balabhai Makwana vs. State of Gujarat and also considered the facts and circumstances of the case. After considering the same, I am of the considered view that only criminal case registered under Bombay Prohibition Act cannot be said to be sufficient enough to arrive at subjective satisfaction to the effect as the activities of the petitioner detenue are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Bombay Prohibition Act or the activities of bootlegging of the detenue. There has to be nexus and link for such activities which disturbs the public order. The activities of the detenue must, in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On a careful perusal of the various authority and relying upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta (supra) and other judgment dated 22/8/2000 of the Division Bench of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.), in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000, in my considered view, it cannot said that the activities of the

detenue are prejudicial to the public order. Therefore, the order of detention dated 25/5/2005 passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

6.The learned counsel for the petitioner has also relied upon the judgment and order in the case of Pravinbhai @ Pravinkaka M. Patel v. Commissioner of Police and others, in Special Civil Application No.14964 of 2005. It is the case of co-accused, and also relied upon another judgment and order in the case of Ravibhai Manubhai Makwana v. State of Gujarat and others in Special Civil Application No.12638 of 2005, decided by this Court (Coram:S.D.Dave, J.) on 17/8/2005.

7.Having heard learned counsel for the parties and perused the record, in my opinion, the detaining authority has passed the order of detention without there being any credible or cogent material about the detenue preferring bail application or his likelihood of getting enlarged on bail and subsequently continuing and indulging into such prejudicial, anti-social and criminal activities again.

8.I have gone through the said judgments and orders and I am of the view that petition is allowed. The order of detention dated 25/5/2005 is quashed and set aside. The deteune, Rajubhai Pratapbhai Panpatil is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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